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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

In re CISCO SYSTEMS INC. SECURITIES
 LITIGATION

No. C-01-20418-JW (PVT)

CLASS ACTION

**[PROPOSED] ORDER GRANTING
 DEFENDANT PRICEWATERHOUSE-
 COOPERS LLP'S MOTION EXCLUDE
 EXPERT TESTIMONY OF D. PAUL
 REGAN**

This Document Relates To:

ALL ACTIONS

The Honorable James Ware
 Date: June 12, 2006
 Time: 9:00 a.m.
 Courtroom 8, Fourth Floor
 Trial Date: October 4, 2006

1 The Court has considered Defendant PricewaterhouseCoopers LLP's ("PwC") motion to
2 exclude certain testimony of plaintiffs' proffered accounting and auditing expert D. Paul Regan.
3 The Court has also considered plaintiffs' opposition to the motion and PwC's reply thereto, as well
4 as the arguments of counsel before this Court on September 18, 2006. The Court concludes as
5 follows.

6 1. Mr. Regan has offered expert opinion testimony criticizing Cisco's accounting for pre-
7 funded inventory ("PFI") transactions. However, plaintiffs have not identified any material false
8 statements resulting from Cisco's accounting for PFI transactions, a necessary element of their
9 claim under Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j). *See In re*
10 *Verifone Sec. Litig.*, 11 F.3d 865, 869-70 (9th Cir. 1993); *In re Merck & Co. Sec. Litig.*, 432 F.3d
11 261, 275-76 (3d Cir. 2005). Consequently, Mr. Regan's testimony regarding PFI transactions is not
12 relevant and will not assist the trier of fact. Fed. R. Evid. 401, 702. Moreover, even if such
13 testimony had some relevance, its probative value would be substantially outweighed by the danger
14 of unfair prejudice, confusion of the issues, or misleading the jury and by considerations of undue
15 delay and waste of time. Fed. R. Evid. 403. Consequently, Mr. Regan's testimony regarding PFI
16 transactions is not admissible.

17 2. In addition to criticizing Cisco's accounting for PFI transactions, Mr. Regan has offered
18 expert opinion testimony criticizing Cisco's non-disclosure of alleged related party transactions and
19 PwC's work concerning such transactions. However, plaintiffs do not claim any damages resulting
20 from Cisco's allegedly incorrect accounting for PFI transactions or its alleged non-disclosure of
21 related party transactions, a necessary element of their claim under Section 10(b) of the Securities
22 Exchange Act of 1934 (15 U.S.C. § 78j). *See Feldman v. Pioneer Petroleum, Inc.*, 813 F.2d 296,
23 302 (10th Cir. 1987). Consequently, Mr. Regan's testimony regarding PFI transactions and related
24 party transactions is not relevant and will not assist the trier of fact. Fed. R. Evid. 401, 702.
25 Moreover, even if such testimony had some relevance, its probative value would be substantially
26 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury and by
27 considerations of undue delay and waste of time. Fed. R. Evid. 403. Consequently, Mr. Regan's
28 testimony regarding PFI transactions and related party transactions is not admissible.

1 3. Mr. Regan has offered expert opinion testimony criticizing PwC's reviews of Cisco's
2 unaudited quarterly financial statements. PwC issued no opinion and made no public statement in
3 connection with Cisco's quarterly financial statements, and consequently, PwC has no potential
4 liability under Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j) for alleged
5 misstatements or omissions in those financial statements. As a result, Mr. Regan's testimony
6 regarding PwC's reviews of Cisco's quarterly financial statements is not relevant and will not assist
7 the trier of fact. Fed. R. Evid. 401, 702. Moreover, even if such testimony had some relevance, its
8 probative value would be substantially outweighed by the danger of unfair prejudice, confusion of
9 the issues, or misleading the jury and by considerations of undue delay and waste of time. Fed. R.
10 Evid. 403. Consequently, Mr. Regan's testimony regarding PwC's reviews of Cisco's quarterly
11 financial statements is not admissible.

12 4. Mr. Regan has asserted the opinion that PwC's conduct constituted an "extreme
13 departure from the ordinary standard of care of an auditor." This opinion is not based upon
14 sufficient facts or data or a reliable methodology. Fed. R. Evid. 702. It is also a legal conclusion
15 that merely seeks to tell the jury how to apply the facts of this case to the law and is therefore
16 inadmissible under Rules 403 and 702. *See United States v. Scop*, 846 F.2d 135, 139-140 (2d Cir.
17 1988). As a result, Mr. Regan's "extreme departure" opinion is not admissible.

18 5. Mr. Regan has sought to offer observations and commentary regarding conditions in the
19 high-technology and telecommunications industries, including the internet service provider ("ISP")
20 and community local exchange carrier ("CLEC") sectors during the class period. Mr. Regan lacks
21 the qualifications to offer expert testimony on these topics, and the observations he has offered in
22 his reports lack sufficient foundation. Fed. R. Evid. 702. As a result, Mr. Regan's testimony
23 regarding the high-technology and telecommunications industries, including the ISP and CLEC
24 sectors is not admissible.

25 It is therefore ORDERED that to the extent plaintiffs choose to present the testimony of Mr.
26 Regan at trial, he may not testify regarding PFI transactions, related party transactions, PwC's
27 reviews of Cisco's quarterly financial statements, or conditions in the high-technology and
28 telecommunications industries, including the ISP and CLEC sectors. It is further ORDERED that

1 Mr. Regan may not offer the opinion that PwC's conduct constituted an "extreme departure from
2 the ordinary standard of care of an auditor."

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4 IT IS SO ORDERED.

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6 Dated: _____, 2006

7 THE HONORABLE JAMES WARE
8 United States District Judge
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